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Supreme Court, U.S.

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No. 96-454

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

ASSOCIATES COMMERCIAL CORPORATION, PETITIONER

v.

ELRAY AND JEAN RASH, RESPONDENTS.

*On Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit*

**BRIEF FOR DONALD AND MADELAINE TAFFI
AS AMICUS CURIAE SUPPORTING RESPONDENTS**

A. Lavar Taylor
Robert S. Horwitz
Law Offices of A. Lavar Taylor
6 Hutton Centre Drive, Suite 880
Santa Ana, CA 92707
(714) 546-0445

Attorneys for Donald and Madelaine Taffi
As Amicus Curiae

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26 pp

QUESTION PRESENTED

In a Chapter 13 bankruptcy proceeding, what is the proper method under 11 U.S.C. § 506(a) for valuing a secured creditor's interest in property of the estate which the debtor intends to retain under the Chapter 13 plan.

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INTEREST OF DONALD AND MADELAINE TAFFI

This case presents the issue of how to value the secured claim of a creditor for purposes of paying that creditor's secured claim under a chapter 13 plan where the property securing the claim is to be retained and used by the debtor. Because of the similarities between the provisions governing the payment of secured claims in chapters 11 and 13 of the Bankruptcy Code, the resolution of this case will affect payment of secured claims in both chapter 13 cases and chapter 11 cases. The Taffis are reorganized debtors in a chapter 11 bankruptcy proceeding and currently have a petition for writ of certiorari pending before

this Court in case No. 96-881. This petition was filed to seek review of the Ninth Circuit's decision in the Taffis' case, reported at 68 F.3d 306, aff'd in part on rehearing en banc, 96 F.3d 1190 (9th Cir. 1996).

The Ninth Circuit, in its en banc opinion, held that, for purposes of fixing the amount to be paid to the Internal Revenue Service under a chapter 11 plan on account of a claim secured by a lien on the Taffis' residence, the appropriate method of valuing the IRS's secured claim was to look to the "fair market value" of the residence and subtract the face amount of senior encumbrances. The Ninth Circuit rejected the Taffis' argument that the amount of the IRS's secured claim should be determined by looking to what the IRS would realize if the IRS enforced its lien against the residence, thereby explicitly rejecting the approach taken by the Fifth Circuit in the present case. Affirmance of the Fifth Circuit in the present case would appear to require a reversal of the Ninth Circuit's decision in the Taffis' case. The Taffis therefore have a substantial interest in the outcome of the present case.

The Taffis have received written consent to file a brief as amicus curiae from petitioner and from respondents.

SUMMARY OF ARGUMENT

1. Resolution of the issue presented by this case will affect the amounts paid to all secured creditors by all debtors in all chapter 11 reorganizations and in all chapter 13 cases. The issue presented in this case thus is of the utmost significance in the bankruptcy reorganization process.

2. Bankruptcy Code section 506(a) governs the determination of the amount of a secured creditor's secured

claim for purposes of the bankruptcy process. The statutory language of this section requires the valuation of the creditor's interest in the bankruptcy estate's interest in the property which secures the claim. This valuation process involves not just a determination of the value of the property securing the secured claim but also involves an examination of the attributes and characteristics of the lien or security interest at issue, including the scope of the lien, the lien enforcement mechanisms available to the creditor, the practices of the creditor in enforcing its lien against the property securing the claim, the relative priority of any competing liens and all other relevant characteristics and attributes.

The first step in determining the value of a specific secured claim is to ascertain the specific attributes and characteristics of the lien or security interest in question. This will necessarily involve an examination of state law where the lien arises under state law and is enforced under state law, but federal law may also be relevant to the extent that federal law governs the creation, enforcement or prioritization of the lien or security interest in question.

The second step is to ascertain a value or range of values of the property securing the claim, taking into account the proposed use or disposition of the property under the plan. While different forms of use and different forms of disposition might yield different values, it is not appropriate to assume, without reviewing the evidence relating to each specific form of use and disposition, that the value of the property will always be higher if "used" instead of "disposed of."

The third step is to determine the extent of the bankruptcy estate's interest in the property securing the claim.

The final step is to determine the amount of money that the secured creditor would receive if it enforced the lien or security interest in question against estate's interest in the property securing the claim, taking into account all of the lien's characteristics, the extent of the bankruptcy estate's interest in the property, and the nature and proposed use or disposition of the property securing the claim.

3. Many lower courts have ignored or underemphasized certain steps in the process of determining the value of a secured creditor's claim or else have focused on factors not properly part of the process of valuing the secured creditor's claim. One group of courts has failed to consider all of the characteristics of the lien or security interest. Another group of courts has looked to the "economic benefit to the debtor," notwithstanding the fact that the statutory language and legislative history make such an inquiry irrelevant. Other courts have improperly applied the valuation process, for example, by including in the value of the secured claim the value of the unsecured portion of the claim. Application of the valuation processes advocated by these lower courts leads to illogical results.

Lower courts have also expressed concerns which are either unfounded or which are addressed elsewhere in the Bankruptcy Code. The risk to the secured creditor that there will be a default under the plan as to that creditor is not a factor to be taken into account in determining the amount of that creditor's secured claim.

4. Use of the valuation process outlined above is consistent with the statutory language of section 506(a), the legislative history of section 506(a) and the previous decisions of this Court. This process will not mandate an automatic "wholesale" value or an automatic "retail" value in any given

situation but will instead require an examination of the facts relating to the specific creditor in question, to the specific lien in question, to the specific property in question and to the specific plan in question. In the present case, application of this process requires the affirmance of the Fifth Circuit's decision.

ARGUMENT

RESOLUTION OF THE ISSUE PRESENTED IN THIS CASE WILL HAVE A SIGNIFICANT IMPACT ON ALL BANKRUPTCY REORGANIZATION CASES

Bankruptcy Code section 506(a) governs the determination of the amount of a secured creditor's secured claim for many purposes under the Bankruptcy Code. In the present case the amount of a secured claim is being determined for purposes of paying the secured creditor under the "cramdown" provisions of Chapter 13, which require the payment of the "allowed amount" of the secured claim as defined in section 506(a). 11 U.S.C. § 1325(a)(5). The Chapter 13 cramdown provisions are for all practical purposes identical to the "cramdown" provisions of Chapter 11 governing the payment of secured claims under Chapter 11 plans, which require the payment of the "allowed amount" of the secured claim. 11 U.S.C. § 1129(b)(2)(A)(II). Determination of the manner in which the amount of a secured claim is determined in the present case will therefore have a significant impact on virtually every chapter 11 and chapter 13 reorganization in which a creditor is asserting a secured claim. The importance of the present case can not be overstated. The rule set forth in the Court's opinion will be applied in a host of different factual situations, even if the Court limits its ruling to determining the

amount of a secured claim for purposes of payment of that claim under a reorganization or wage-earner plan.

**SECTION 506(A) OF THE BANKRUPTCY CODE
REQUIRES CONSIDERATION OF ALL RELEVANT
FACTORS IN DETERMINING THE AMOUNT OF AN
ALLOWED SECURED CLAIM, NOT JUST
CONSIDERATION OF THE VALUE OF THE
PROPERTY SECURING THE CLAIM**

The language of section 506(a) requires the valuation of the creditor's interest in the estate's interest in the property which secures the claim in question. This language necessitates not only a determination of the value of the property securing the claim, but also an analysis of the secured creditor's rights under the agreement or statute creating lien or security interest which encumbers that property. It is, after all, the lien or security interest itself which differentiates a secured creditor from an unsecured creditor.

In determining the value of the claim secured by a lien or security interest, a determination of the amount which the creditor would receive upon enforcement of that lien or security interest is the key to determining the value of the claim which the lien secures for purposes of section 506(a). *In re Hoskins*, 102 F.3d 311, 317-320 (Easterbrook J., concurring). This determination is similar to the process which would be used by a third party investor who was offered the opportunity to purchase the secured claim. It is difficult to imagine a third party investor arriving at a price they were willing to pay for a secured claim without considering how much money the party would receive in the event it was necessary to enforce the lien

in question against the collateral.¹ Because the statutory language requires the valuation of the secured creditor's interest and not just the valuation of the property securing the lien or security interest in question, all factors which affect the value of the secured creditor's interest are relevant to determining the value of the secured creditor's secured claim. Because the statutory language requires valuation only of the secured portion of the claim and not valuation of any unsecured portion of the claim, the amount of money which the secured creditor would receive if it enforced the lien against the collateral is the logical method of fixing the value of the secured claim for purposes of section 506(a).

Determining the value of a specific secured claim necessarily involves several steps because of the numerous factors that are relevant to fixing the value of the secured creditor's interest. The first step is to determine the specific attributes or characteristics, both intrinsic and extrinsic, of the lien or security interest in question. One example of an intrinsic attribute is the fact that the lien attaches only to the asset itself and not to the income produced by the asset -- a simple deed of trust -- or, conversely, that the lien attaches to both the asset and the income produced by the asset -- a deed of trust and assignment of rents. Another example of an intrinsic attribute is the creditor's enforcement mechanism to enforce the lien. The creditor might only be able to foreclose nonjudicially

¹ The most significant difference between a situation involving a potential third-party purchaser of a secured claim and the valuation of a secured creditor's interest under Bankruptcy Code section 506(a) is that the third-party investor is likely to acquire the entire amount of the claim, including the unsecured portion of the claim, while the Bankruptcy Code process involves the valuation of only the secured portion of the claim.

against the property, as is the case under California law with a lien on a residential dwelling which secures a purchase money loan. See Cal. Code Civ. P. § 580b. Conversely, the creditor might be able to appoint a receiver to collect rents and then conduct a judicial foreclosure sale. See Cal. Code Civ. P. §§ 564-570 and § 725a et seq. It requires nothing more than common sense to conclude that these factors affect the value of a secured claim.

One example of an extrinsic attribute which affects the value of a secured claim is the relative priority of the lien or security interest in question vis-a-vis other liens or security interests encumbering the property securing the claim which is to be valued. Other factors or characteristics, such as the habits or practices of the secured creditor, may also be relevant to valuing a secured claim. Evidence that a creditor routinely enforces its liens against motor vehicles in certain ways, which in turn produces certain results, is relevant to determining the value of that creditor's interest as a secured creditor in a motor vehicle. Similarly, evidence that a taxing agency has a strictly enforced policy of never enforcing its lien against the primary residence of a taxpayer as long as the taxpayer continues living in that residence is relevant to determining the value of that taxing agency's secured claim if the property securing the claim is the taxpayer/debtor's primary residence.

Determining these various intrinsic and extrinsic attributes will necessarily involve an examination of state law and, in some instances, federal law, depending on the facts of the case. Security interests governed by state law will require an examination of state law. See, e.g., Cal. Com. Code § 1-201 et seq. Federal tax liens governed by federal law will require an examination of federal law. See, e.g., 26 U.S.C. section 6321 et seq. Sometimes both federal and state law will be

relevant. For example, a state law-created security interest may attach only to a piece of property and not to the income generated by that property. After the filing of the bankruptcy petition, however, the debtor might enter into an adequate protection agreement pursuant to federal bankruptcy law, 11 U.S.C. § 361, which creates an additional lien in favor of the secured creditor on the income generated by the collateral.

The petitioner's criticism of the Fifth Circuit's examination of state law to assist in reaching a decision is unjustified and is belied by the petitioner's own acknowledgment that state law is relevant to a determination of the value of the secured creditor's secured claim. This Court has previously held that state law should be looked to in a bankruptcy context in those situations where the property rights were created under state law. *Butner v. United States*, 440 U.S. 48 (1979).

At one point petitioner argues that the Fifth Circuit improperly ignores the right under state law to be paid in full. Brief for Petitioner at p. 25. This right, however, is not the sine qua non of a secured claim. A secured claim can exist even where there is no longer any right to obtain payment of the debt. See *Johnson v. Home State Bank*, 501 U.S. 78 (1991). It is the existence of a lien or security interest and property to which that lien or security attaches which is the basis of a secured claim. Consequently, examination of the legal provisions which govern the creation and enforcement of the lien are relevant to valuing the portion of the claim secured by the lien. The existence under state law of the right to be paid a debt in full, over and above the value of the security, is not relevant to valuing the secured portion of a creditor's claim.

At another point petitioner appears to argue that federal law prevents an examination of state law to determine the value

of a secured creditor's secured claim. Brief for Petitioner at pp. 29-31. In the same breath, however, petitioner concedes the relevance of state law. Petitioner states, at page 23 of its brief at footnote 10, that "if part of the value of Rash's truck resulted from accessories that he installed as to which petitioner's lien would not extend as matter of applicable non-bankruptcy law, an adjustment in valuation also would be required." The "applicable non-bankruptcy law" to which petitioner refers in this context is undoubtedly state law governing security interests. In light of petitioners concession that state law governing the creation and enforcement of security interests is relevant to determining the value of petitioner's secured claim, the result which petitioner urges in this case does not make sense.

The United States, in its Brief for the United States as Amicus Curiae, makes the same error. It does not follow that state law governing the creation and enforcement of security interests and liens should be disregarded merely because, as noted by the United States in its Brief at pages 18-19, Congress has enjoined the secured creditor from exercising its lien enforcement rights and has permitted the debtor to retain and use the property securing a secured claim upon the satisfaction of certain requirements. Taking the the United States' argument to its logical conclusion, one could argue that the Bankruptcy Code makes irrelevant the well-established rules governing the creation and enforcement of federal tax liens set forth in 26 U.S.C. section 6321 et seq. for purposes of valuing the secured claim of the Internal Revenue Service. The United States would justifiably protest against such an argument if it were raised.

Once the task of examining the various attributes and characteristics of the lien or security interest in question has been completed, the next step is to ascertain a starting "value"

or range of "values" of the property securing the claim, based upon the proposed use or disposition of the property under the plan of reorganization. Different types of property can be used or disposed of in many different ways. For example, residential real estate could be used as a personal residence, could be used as rental income property, could be sold as "inventory" by a builder of homes, or could be condemned by the state for a public works project. A truck could be used for commuting, could be driven by someone who is paid as a professional truck driver, could be sold to a wholesale truck dealer or could be disassembled for purposes of selling the parts of the truck as spare parts. Each separate use or disposition might yield a different starting "value" or range of "values" of the property securing the claim, but it would be inappropriate to assume, without reviewing the evidence relevant to each separate use or disposition, that the starting "value" of the property will always be higher if "used" instead of "disposed of," regardless of the use or disposition of the property. Similarly, it would be inappropriate to assume that the values generated by any two uses would be the same or that the values generated by any two uses would differ. Each particular use and each particular disposition must be looked at independently.

The assertion by petitioner that "property is worth more when used by the debtor than when disposed of," Brief for Petitioner at p. 35, is not supported by logic or common sense. Property may have less value in the hands of the debtor than if the property were foreclosed on. For example, if the debtor owns real property encumbered by long-term ground leases which call for the payment of rent at rates which are below-market due to changes in the market since the ground leases were entered into, and if a foreclosure by a senior lienholder would eliminate the ground leases under applicable state law, then disposition of the property by way of foreclosure would

increase the value of the property by eliminating the below-market ground leases. There are undoubtedly other examples where property has a greater value after being disposed of than it has in the hands of a bankruptcy debtor, but there is no substitute for a case-by-case analysis based upon the facts of each case.

Even if one assumes that, where the debtor retains the property securing the secured claim, such property "must" be valued at the full fair market value of similarly used property, it does not follow that the value of the secured creditor's secured claim is equal to that full fair market value. As noted above, other factors are relevant to a determination of the value of the secured creditor's secured claim.

The next step is to determine the extent of the bankruptcy estate's interest in the property securing the claim. For example, if a bankruptcy debtor is a 50% owner as a tenant in common with one other unrelated person, the bankruptcy estate will include only the 50% interest of the debtor. 11 U.S.C. § 541.

The final step is to determine, in light of all of relevant attributes and characteristics of the lien, in light of the type of property which secures the claim, in light of the bankruptcy estate's interest in the property, and in light of the proposed disposition or use of that property, the amount of money the enforcement of the creditor's lien against the estate's interest in the property in question would yield the creditor. A secured creditor which holds a lien against both property and the income to be produced by that property under the plan would fare better than the secured creditor which holds only a lien against the property. A secured creditor which holds a lien against both the property and the income produced by that property would fare

better where the proposed use of the property under the plan will generate income than such a creditor would fare where the proposed use of the property under the plan did not produce income. A secured creditor whose enforcement mechanism results in the disposition of the encumbered property on the "retail" market would fare better than the creditor whose enforcement mechanism results in the disposition of the encumbered property on the "wholesale" market.

Each case must be determined on its own facts. A particular secured creditor is free to demonstrate, based on the facts peculiar to that case, that enforcement of its lien against the property securing the claim would produce an amount of money based upon the "retail" value of the property securing the claim, while a debtor is free to demonstrate, based on the facts peculiar to that case, that the enforcement of that lien would produce an amount of money based upon the "wholesale" value of that property.

Many lower court cases have ignored or underemphasized certain of the steps in the process of determining the value of the secured creditor's secured claim set forth above. For example, cases typified by the Ninth Circuit's en banc decision in the Taffis' case, 96 F.3d at 1190, have failed to consider anything other than the value of the property securing the claim and the relative priority of the liens encumbering that property. The Ninth Circuit has deemed many of the characteristics of the lien in question to be irrelevant to a determination of the value of the claim secured by that lien. Thus, under the Ninth Circuit's rule, the holder of a judgment lien would always be treated the same as the holder of a non-recourse mortgage and the holder of a charging order. This is the functional equivalent of attempting to value residential dwellings solely on the basis of the condition of the interior of

the residence, without taking into account the location of the property.

The illogical results of cases such as *In re Taffi* are illustrated by the result in the Taffis' case. The Taffis and the Internal Revenue Service stipulated that the normal fair market value of the property securing the claim in question (the Taffis' residence) was \$300,000.00 and that there were liens senior to those of the IRS totalling \$234,000.00. The parties further stipulated that the costs associated with a voluntary sale of the property by the Taffis would be \$27,000.00 and that, if the IRS administratively enforced its lien against the property, the sale by the IRS would generate gross sales proceeds of \$240,000.00, leaving a total of \$6,000.00 for the IRS. See 68 F.3d at 307. The Ninth Circuit held that the "value" of the IRS's secured claim was \$60,000.00 even though there was no way for either the IRS or the Taffis themselves to obtain the sum of \$60,000.00 from the property securing the IRS claim. The most the IRS could have received in enforcing its lien against the property securing its claim was \$6,000.00. The most the Taffis could have obtained from this property for the benefit of the IRS was \$39,000.00 ("fair market value" less senior encumbrances and costs of sale), but there was no way for the IRS to compel a voluntary sale by the Taffis. Thus, the Ninth Circuit held that the "value" of the secured claim of the IRS was equal to an amount that was significantly higher than the amount the IRS could have obtained under any circumstances on account of its lien against the subject property.

The Ninth Circuit's rejoinder that it is inappropriate to consider a "hypothetical" enforcement of the lien by the IRS when no such enforcement sale is taking place is a non-sequitur. All valuations, unless they involve the actual sale of the subject property, necessarily involve a "hypothetical" sale. The

question is not whether hypothetical fact situations should be looked to in valuing a secured creditor's claim where the property securing the claim is being retained by the debtor. The answer to that question will always be "yes." The question, rather, is which hypothetical set of facts is the most relevant given that the statutory language requires a valuation of the creditor's interest in the estate's interest in the property securing the claim, not just a valuation of the property securing that claim. For the reasons stated above, the appropriate hypothetical set of facts to look to is a hypothetical enforcement of the secured creditor's lien against the property securing the claim.

Other lower courts have focused on factors that are not properly part of the process of determining the dollar value of a secured claim. In the case of *In re Winthrop Old Farm Nurseries, Inc.*, 50 F.3d 72 (1st Cir. 1995), the First Circuit improperly focused on the "economic benefit for the debtor" in reaching its conclusion, 50 F.3d at 75. The statutory language, however, does not mention the economic benefit to the debtor.

In fact, section 506(a) studiously avoids the use of the word "debtor," focusing instead on the creditor's interest in the estate's interest in the property securing the secured claim. Congress used the word "debtor" numerous times throughout the Bankruptcy Code. The absence of the word "debtor" in section 506(a) can not properly be called an inadvertence or an oversight. Focusing on the economic benefit to the debtor of retaining the property would constitute an improper legislative revision of this section by the courts.

A focus on the economic benefit to the debtor of retaining the property in determining the value of a secured creditor's secured claim yields illogical results. For example, one economic benefit to the debtor of not having to move out of

his or her principal residence is the avoidance of moving costs. If the economic benefit to the debtor of being able to retain the residence securing the claim is relevant to determining the value of the secured claim of the creditor holding a lien against the debtor's residence, then the amount of the moving costs avoided by the debtor must be added to the amount of the creditor's secured claim. Similarly, if the debtor, by retaining the property securing the claim, avoids a large income tax liability which would have been incurred upon disposition of the property in question, then the amount of taxes saved by the debtor would have to be taken into account in valuing the secured creditor's secured claim. Such a result is totally illogical and is at odds with the legislative history cited by petitioner at pages 41-42 of the Brief of Petitioner.

Still other lower courts have misapplied the factors to be used in determining the value of a secured creditor's secured claim. Those courts which cite to *In re Green*, 151 B.R. 501, 505 (Bankr. D. Minn. 1993), cited in Brief for United States as Amicus Curiae at pp. 10-11, miss the point. That court stated that "to value [a secured creditor's] interest in property based solely upon the amount that could be realized upon sale of the collateral ignores the value associate with the right to receive the stream of payments that the lien secures." 151 B.R. at 505. The right to receive the payment of the debt, however, is a right associated with an unsecured claim and thus has no relevance in valuing a secured claim. It is the existence of the lien or security interest and the property securing that lien that creates the secured claim. Without these two items, there is only an unsecured debt.

The concerns raised by petitioner are either unfounded or are addressed elsewhere in the Bankruptcy Code. For example, petitioner asserts that the construction of section

506(a) urged by respondents is illogical because it results in the "value" of the secured claim under 11 U.S.C. § 1325(a)(5)(B)(ii) being equal to the "liquidation value" of the secured claim under the best interests of creditors test set forth in 11 U.S.C. § 1325(a)(4), arguably resulting in a surplusage of language. Brief of Petitioner at pp. 17-18. Petitioner is mistaken in this analysis. The "best interest of creditors" test set forth in section 1325(a)(4) (and in 11 U.S.C. § 1129(a)(7)(A)) focuses on what would happen if there was a liquidation by a trustee in chapter 7. A creditor's enforcement of its lien against the property encumbered by that lien will not automatically yield the same result as a liquidation of the property by a chapter 7 trustee. Differences between the manners in which bankruptcy trustees dispose of assets and in which secured creditors enforce their liens can yield significantly different results for the secured creditor. The possibility that, in a given case, the two different hypotheticals (chapter 7 liquidation versus enforcement of the lien by the secured creditor) could yield similar results for the secured creditor does not make these two tests identical.

The petitioner's assertion that the second sentence of section 506(a) is rendered surplusage under respondents' position is refuted by the analysis set forth above. The amount received by a secured creditor which enforces its lien against property could vary where the use of the property varies. This will not always be the case, but an examination of the specific use or disposition of the property securing the claim will always be required. That is all the language of section 506(a) requires. The language does not mandate that different uses must yield different values, does not mandate that different uses must yield similar values and does not mandate that use by the debtor yield a different value than a disposition by a debtor.

The argument that a higher value must be assigned to secured claims because of the risk of a default as to the secured creditor under the plan is likewise without merit. First, in order for the plan to be confirmed, the bankruptcy court must make a factual finding that the debtor will be able to make all payments due to secured creditors under the plan. 11 U.S.C. § 1325(a)(6). Similar safeguards exist in chapter 11. *See* 11 U.S.C. § 1129(a)(11). If a secured creditor has legitimate concerns about a debtor's ability to pay the secured claim, the secured creditor can oppose confirmation of the plan on the grounds that the requirements of section 1325(a)(6) have not been met.

Second, the secured creditor is already compensated for the risk of default by virtue of the fact that section 1325(a)(5)(B)(ii) requires the payment of the present value of the secured claim. The greater the risk to the secured creditor, the greater the rate of interest that can be sought by the creditor. *See In re Camino Real Landscape Maintenance Contractors, Inc.*, 818 F.2d 1503 (9th Cir. 1987), and *In re Fowler*, 903 F.2d 694 (9th Cir. 1990). Thus, where property is encumbered by first and second deeds of trust, both of which secure valid debts, the holder of the second deed of trust is not compensated for the increased risk associated with being in second position by increasing the amount of its secured claim. Rather, that risk is compensated for by paying the holder of the second deed of trust a higher rate of interest.

Use of the valuation process set forth above for the valuation of secured claims is mandated by the language of § 506(a). The valuation in question is of the creditor's interest in the estate's interest in the property securing the claim. It is not appropriate to value a parcel of real estate without taking into account all relevant factors affecting the value of the real estate,

such as the property's location, the property's condition, any easements on the property, sales of nearby properties, and other factors. Similarly, it is not appropriate to value a secured creditor's secured claim without taking into account all relevant factors, such as those discussed above.

Use of the valuation process set forth above is also consistent with the prior decisions of this Court. In *United Savings Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365 (1988), this Court held that the delay in the right to foreclose resulting from the imposition of the automatic stay under 11 U.S.C. § 362 was not an "interest in property" entitling a secured creditor to "adequate protection" under 11 U.S.C. § 361. This Court, in reaching its decision, noted that a contrary result would have meant that the amount of a secured creditor's secured claim increased as the length of the imposition of the automatic stay increased. This Court therefore rejected the notion that the amount of a secured creditor's secured claim should be affected by a delay in the secured creditor's enforcement of its lien against the property securing the claim.

This Court has also held that it is appropriate to look to state law to determine the scope of the interest of a secured creditor in situations where the security interest was created under state law. *Butner v. United States*, 440 U.S. 48 (1979), *see also BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994).² This case should be resolved in the same manner, by looking to

² Petitioner errs in relying on the *BFP* case in support of its position. The *BFP* case dealt solely with the value of the property securing a secured claim. The present case deals with the value of the secured creditor's interest in the property securing the claim. As previously noted, the value of the property securing the claim is not dispositive of the value of the secured creditor's interest.

state law to determine the characteristics of a particular lien where that lien is created under state law. Where liens are created under federal law, an examination of the federal law provisions governing creation and enforcement of the liens in question will be in order.

To the extent legislative history is relevant to a resolution of this case, it supports an affirmance of the Fifth Circuit's en banc decision. Congress indicated that it is not appropriate to look to the idiosyncratic value placed by the debtor on the property securing the claim in valuing the amount of a secured claim. H.R. Rep. No. 95-595, at 124, 1978 U.S.C.C.A.N. at 6085. This is another way of stating that it is improper to look to the economic value to the debtor of not having to dispose of the property.

Application of the valuation process set forth above mandates an affirmance of the Fifth Circuit's en banc decision. There apparently is no disagreement over the fact that the value of the secured claim in question fixed by the Fifth Circuit is equal to the amount that the secured creditor would receive if it enforced its lien against the property securing the claim. Because the property securing the claim is only a truck, not the income from the truck and not various components of an ongoing business, this Court need not speculate on how the result reached by the Fifth Circuit would change if the petitioner's lien encumbered both the truck and the income generated by the truck or encumbered all of the assets of the respondent's business. Lower courts will be able to answer those questions as they arise based upon the valuation process set forth above.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

A. Lavar Taylor, Attorney
Robert S. Horwitz, Attorney
Law Offices of A. Lavar Taylor

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